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SUPREME COURT OF THE

UNITED STATES

NO._____

HALSEY L. WILLIAMS,

Petitioner,

vs.

BURDICK F. WILLIAMS,

Respondent.

PETITION FOR WRIT OF CERTIORARI

HALSEY L. WILLIAMS
458 South Spring Street
Los Angeles,California
90013
MAdison 8-1443
Petitioner in Pro Per

AKELEY P. QUIRK and
MILO V. OLSON
612 South Flower
Los Angeles,California
MAdison 8-7238
Attorneys for Respondent.

1. The Court of Appeal, Second Appellate District, Division Four, rendered its Opinion in 2nd Civil Appeal No. 35057, which was filed in the Clerk's Office on November 25, 1969. A copy of this Opinion is appended to this Petition. There is no other source known to this petitioner.

2. The date of the decree sought to be reviewed and time of its entry is November 25, 1969.

3. The date of the denial by the Court of Appeal of a Petition for Rehearing was December 10, 1969.

4. A Petition for a Hearing was denied by the Supreme Court of the State of California on January 21, 1970.

5. An extension of time to May 1, 1970 was granted petitioner in which to petition for Writ of Certiorari.

JURISDICTION

Jurisdiction to review the decree of the Court of Appeal of the State of California is conferred by the following Federal statutes:

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

"(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being

repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

28 U.S.C §1257 (3)

"(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may ex-

tend the time for applying for a writ of certiorari for a period not exceeding sixty days."

28 U. S. C. §2101(c)

QUESTIONS FOR REVIEW

The questions presented for review are as follows:

1. Is it proper for an attorney for the plaintiff to conduct conferences with the referees appointed by the court to administer the partition in kind?

2. Were the following words in quotations below declared voluntarily and under penalty of perjury sufficient to establish misconduct on the part of the referees and declaring attorney and to establish grounds for

the modifying or vacating of the REPORT OF REFEREES "...and your declarant conducted conferences with the referees and all other conferences"?

3. Should either the trial court or the Court of Appeal have decreed a partition in kind when to do so must necessarily violate the Building Ordinances, and breach an existing covenant and agreement between the City of Los Angeles and by the owners to hold the entire area involved as one parcel?

4. Whether or not this petitioner's basic rights were infringed upon at the hearing before the Superior Court of the State of California, For the County of Los Angeles?

5. Did the omission in the Opinion of the Court of Appeal designated as 2nd Civil 35057 present a reversable error in not ruling on the four preceding questions?

THE CONSTITUTIONAL PROVISIONS RELIED UPON

AMENDMENT XIV - CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION;APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

1) A CONCISE STATEMENT OF THE CASE

Mr. Akeley P. Quirk, one of the

attorneys for the plaintiff, on the 16th day of October, 1968 stated "Milo V. Olson, Esq. prepared the briefs and argued the matter in court, and your declarant conducted the conferences with the referees that preceded the Referees' Report and all other conferences." This was declared under penalty of perjury in Declaration dated the 16th day of October, 1968 [2nd Cl.Tr. p. 30, ls. 7 through 10].

2) REPORT OF REFEREES

According to letter of September 9, 1968 from Mr. Jack Bray, Surveyor hired by the Referees written to Mr. Donald C. Kimber, one of the Referees, the partition raises four violations of the City of Los Angeles Ordinances. Petitioner quotes a portion of that letter herewith:

"This partition, while it might be the ideal pattern from the economics of the split, raises four violations of the City of Los Angeles Ordinances. Following is a summary of each violation and its possible solution:

(a) Section 12.21 -i paragraph 3 states tha t all business or commercial buildings in the Downtown Business District having a gross floor area of 7,500 square feet or more have at least one parking space for each 1000 square feet of floor area provided. In essence this means, based on the Bank of America Building area of 8,185 square feet (6,660 square feet main floor and 1,525 square feet of mezzanine) that eight parking spaces must be provided to go with the building. These spaces shall be located on the same lot or not more than 1500 feet therefrom.

Inasmuch as the proposed partition allows for no parking spaces on the Bank of America parcel, it will be necessary to record a covenant and agreement to the city to furnish these parking spaces somewhere within 1500 feet of the Bank of America parcel. This covenant and agreement must be based on an approved long term lease as regards the parking parcels. This is quite difficult to obtain as most landowners do not want to jeopardize future development of their holdings with such a long term lease.

(b) There exists a covenant and agreement as described in Title Insurance and Trust Co. title report No. 6628882 dated May 27, 1966 whereby Williams Investment Co. does covenant and agree to hold the entire area involved as one parcel.

This would have to be negotiated with the City of Los Angeles and a release of said covenant and agreement recorded.

(c) The Bank of America Building and the K. & L. Jeweler's building were constructed with a common wall. In previous years parcel lines were located on the center lines of said common walls. Changes in the building code have since made location of lines of any new parcels based on the party wall concept illegal.

An appeal for Modification of Building Ordinances would have to be filed and I think would probably be granted if the order of partition was an accomplished fact.

(d) Any division of land based on new title lines is subject to the Parcel Map Act as per City Zoning Code, Section 17.50.

This can be taken care of after the order of partition by the filing, processing and recording of a parcel map."

3) Violation (d) as set out in Mr. Bray's letter to Mr. Kimber under date of September 9, 1968 was attempted to be solved by covenant to provide parking space as long as he owns Parcel A. The Declaration of plaintiff Burdick F. Williams [2d Cl. Tr. p. 31, made part of record on Writ of Certiorari].

4) At the hearing in the Superior Court this petitioner was not afforded the opportunity to object, discuss or make assignments of error because of the summarily abrupt termination of the hearing, as is clearly shown by the Reporter's Transcript which is made a part of the record in the Writ of Certiorari.

The Superior Court Reporter's Transcript will also show that this

petitioner was not accorded an opportunity to present evidence, or to testify himself. He was not given the opportunity of cross-examining the plaintiff, Burdick F. Williams, even though the Court answered "That is right, Yes" to Mr. Olson's question "Do you want Mr. Halsey Williams to have a chance to cross-examine? This was during the Direct Examination of Burdick F. Williams (Rp.Tr. p. 27, ls. 13 through 16).

5) Due to the summarily abrupt termination of the Superior Court hearing, this petitioner was not able to make any assignments of error until on appeal. The following is an excerpt from Appellant's Opening Brief to the Court of Appeals, 2nd Appellate

District, State of California, filed on August 31, 1969:

"V

AT THE TRIAL ON REFEREES'REPORT

The plaintiff-respondent was put on the stand to explain why Parcel "A" was awarded plaintiff-respondent and Parcel "B" was awarded to defendant-appellant. Mr. Olsen, attorney for plaintiff-respondent (R. Tr. p. 27, ls. 14-15) asked the court "Do you want Mr. Halsey Williams to have a chance to cross-examine?" The court answered "That is right, yes".

First assignment of error: The Reporter's Transcript does not show that defendant-appellant was given that chance. The court called a recess from 10:00 A.M. to 11:30 A. M. for the purpose explained in Reporter's Transcript, p. 27, l. 25. After a conference in the hall between plain-

tiff-respondent, Mr. Donald C.Kimber, Referee, and Mr. Olson, Attorney for plaintiff-respondent, they decided not to put Burdick F. Williams back on the stand but Mr. Kimber was to explain why Parcel "A" and Parcel "B" were awarded to the parties as they were.

The testimony here was hearsay and the witness did not know the name of the officers of the Bank of America whom he claimed said that the Bank would not deal with defendant-appellant.

Second assignment of error:

The court did not give defendant-appellant the opportunity to testify as the record will show (R.T. p. 34). The court decided to go out and get Cal. Jur. to see what it said about choice of parcels in partition.

Third assignment of error:

Defendant-appellant was not given the chance to fully explain and support his motion to set aside or modify Referees' Report of Partition (2nd C.T. p. 74; Sec. 796 C.C.P.) The supporting declaration of defendant Halsey L. Williams (2nd C.T. p. 37; Sec. 796 Code of Civil Procedure) and "Additional Declaration of Defendant Halsey L. Williams in Opposition to Report of Partition by Referees" (2nd C. T. p. 91).

Fourth assignment of error:

Defendant-appellant was not given a full opportunity to explain and support a motion for new trial (2nd C.T. p. 94). At this hearing there was no reporter.

Fifth assignment of error:

On the Reporter's Transcript starting from page 35, line 10 to page 39, line 11, it can plainly be seen that the court gave defendant-appellant no opportunity to quietly and continuously explain his objections to the valuations of the parcels, because that effects the owelty. The court would not listen to why under the circumstances the parcels were valued unfairly".

A DIRECT AND CONCISE ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

This petitioner's source of this information is a Declaration of Akeley P. Quirk, one of the attorneys for plaintiff, who declared under penalty of perjury "Milo V. Olson, Esq., prepared the briefs and argued the matters in court,and your declarant conducted the conferences with Re-

ferees that preceded the Referees' report and all other conferences".

This petitioner contends that these words do not mean that Mr.Quirk just made trivial inquiries of the referees, or just that he sat in on conferences of the referees, or that he participated in such conferences, it means that he conducted the conferences as a chairman would.

Yet, neither the trial court nor the Justices of the Court of Appeal seemed to be interested in the slightest.

Also, they went much further -- they approved of the report of the referees unquestionably, and they decreed parcel lines which were illegal according to Building Ordinances, taking the advice that a modifi-

cation of the Building Code would be granted if the order of partition was an accomplished fact.

The partition was necessarily accomplished by a breach of a covenant and agreement with the City of Los Angeles where the owners were to hold the entire area involved as one parcel. The negotiation with the City of Los Angeles on a release of said covenant and agreement should have been accomplished before partition in kind was ordered.

In other words, this petitioner has been compelled to take a title that was and is now <u>really</u> clouded up.

As to the Opinion, Civ. No.35057, so that my rights to due process of law and the equal protection of the law

are preserved, should have announced that it is perfectly proper for an attorney to conduct conferences with the referees.

Also, that an admission under penalty of perjury is nothing more than what could be "poo-pooed" away.

I see no such announcements or rulings in Opinion Civ. No. 35057, so petitioner contends that he must be getting special treatment and, therefore, not due process at all and not equal protection of the law.

CONCLUSION

Petitioner urges that he had a judicial treatment that has "so far departed from the accepted and

usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for exercise of this Court's power of supervision". [Reference was made to the Supreme Court of the United States by the term Court's].

Petitioner has borrowed the words in the quotation just preceding from paragraph (b) of Rule 19 of the Supreme Court of the United States.

Respectfully submitted

Halsey L. Williams
Petitioner in Propria Persona

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Los Angeles, State of California, over the age of eighteen years and not a party to the within action or proceeding; that my business address is 102 South Oxford Avenue, Los Angeles, California 90004. That on May 2, 1970, I served the within Petition for Writ of Certiorari on the respondent in said action or proceeding by depositing a true copy thereof, enclosed in a sealed envelope with postage fully prepaid, in a mail-box at the United States Postoffice, Sixth and Harvard Boulevard, Los Angeles, California, addressed to the attorneys

for said respondent at the office address of said attorneys as follows:

MILO V. OLSON
AKELEY P. QUIRK
Attorneys at Law
612 South Flower Street
Los Angeles,California

and to

County Clerk
Los Angeles County
County Courthouse
111 North Hill Street
Los Angeles, California
90012

(for the Honorable
Robert W.Kenny,Judge)

and to
the Referees

Donald C. Kimber
Attorney at Law
639 South Spring Street
Los Angeles,California

Halleck W. Hoag
% Donald C. Kimber
Attorney at Law
639 South Spring Street
Los Angeles,California

James L. Barrett
% Donald C. Kimber
Attorney at Law
639 South Spring Street
Los Angeles, California

and to

Clerk of the Court of
Appeal, Second Appellate
District, State Building
217 West First Street
Los Angeles,California

Lillian Ashley

Subscribed and sworn
to before me this 2nd
day of May, 1970.

Notary Public in and for said
County and State

APPENDICES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

BURDICK F.WILLIAMS, Plaintiff, vs. HALSEY L.WILLIAMS,et al., Defendants.	NO.887,163 REPORT OF PARTITION BY REFEREES PETITION FOR INSTRUCTION

Halleck W. Hoag, Donald C.Kimber, and James L. Barrett, the Referees appointed by this Court to make partition of certain real property between Burdick F. Williams and Halsey L. Williams and in the manner directed by an Interlocutory Decree of this Court, report to this Court that, pursuant to such Interlocutory Decree and the authority conferred thereby, they did, on the 26th day of September 1968, partition said real property and apportion the same between the owners, quality and quantity relatively considered, as follows, to wit:

To BURDICK F. WILLIAMS, the plaintiff, they have alloted the following parcel of said land, to wit:

That portion of the real property described in the Interlocutory Decree and delineated as Parcel "A" on Schedule "A" attached hereto and made a part hereof - valued at $200,000.00.

To HALSEY L. WILLIAMS, one of the defendants above named, they have allotted the following parcel of said land, to wit:

That portion of the real property described in the Interlocutory Decree and delineated as Parcel "B" on Schedule "A" attached hereto and made a part hereof - valued at $210,000.00.

It has been ascertained that there is presently outstanding against the entire parcel of real property a Trust Deed in favor of Citizens National Trust and Savings Bank of Los Angeles, with a present balance due in the sum of $29,941.13, which constitutes a valid and outstanding first lien upon the entire parcel of property. Because of the difference in values of the two parcels of land and because the real property given to the Defendant Halsey L. Williams is valued in a

sum exceeding the value of the Plaintiff's property by the sum of $10,000.00, it is the opinion of the Referees that the Defendant Halsey L. Williams should pay the sum of $5,000.00 in cash, payable forthwith, to the plaintiff Burdick F. Williams. The undersigned further wish to call to the Court's attention that, as a result of their investigation, including appraisals of the subject property, it is evident that the value of the subject property is substantially reduced by partioning the same. The value of the property without partitioning would appear to be $520,000.00, whereas the total value of the subject property after partitioning is in the sum of $410,000.00. Therefore, by partitioning the property herein, the Plaintiff and Defendant, as owners of the property, are losing approximately the sum of $110,000.00.

The undersigned further report that they have employed Mr. Paul Belous, M.A.I., a licensed real estate appraiser, to assist them in marking out the respective shares allotted to the above parties. Said Referees have incurred a liability in the sum of $443.75 in payment of said appraisal fees.

Attached hereto and marked Exhibit "B" is a copy of a report from Swinney-Mollenhauer & Bray, Inc.,

licensed surveyors. In order to obtain a legal description for the two parcels of property as partitioned and as set forth on Exhibit "A", Petitioners and your Referees consulted Title Insurance and Trust Company to obtain the necessary legal descriptions. However, your petitioners were informed and advised by Title Insurance and Trust Company that the only way a correct legal description could be obtained would be by way of a survey conducted by a licensed surveyor. Thereupon, your Petitioners consulted with Swinney-Mollenhauer & Bray, Inc., and discussed the matter with Mr. Jack E. Bray. As indicated on Exhibit "B", there are four separate problems confronting Petitioners with reference to the proposed partition. Reference is hereby made to said Exhibit "B" for details thereof.

The undersigned have each conducted their own investigation of the subject property, having made physical examinations of the same; each of the undersigned have examined the appraiser's report thoroughly and studied the same before arriving at the ultimate decision; the undersigned have met in conferences on several occasions to discuss the matter and have corresponded with each other, as well as conducting

several telephone conferences. Several conferences have also been held with Mr. Jack E. Bray, licensed surveyor, with reference to the numerous problems as set forth in Exhibit "B" attached hereto. It is respectfully requested that the undersigned be granted the sum of $2,250.00 for their fees, and the additional sum of $150.00 to cover the necessary expenses incurred by them pursuant to the Order of this Court.

Petitioners therefore respectfully request instructions from this Court with respect to their duties and obligations in partitioning the subject property in view of the problems raised herein.

DATED this 26th day of September, 1968.

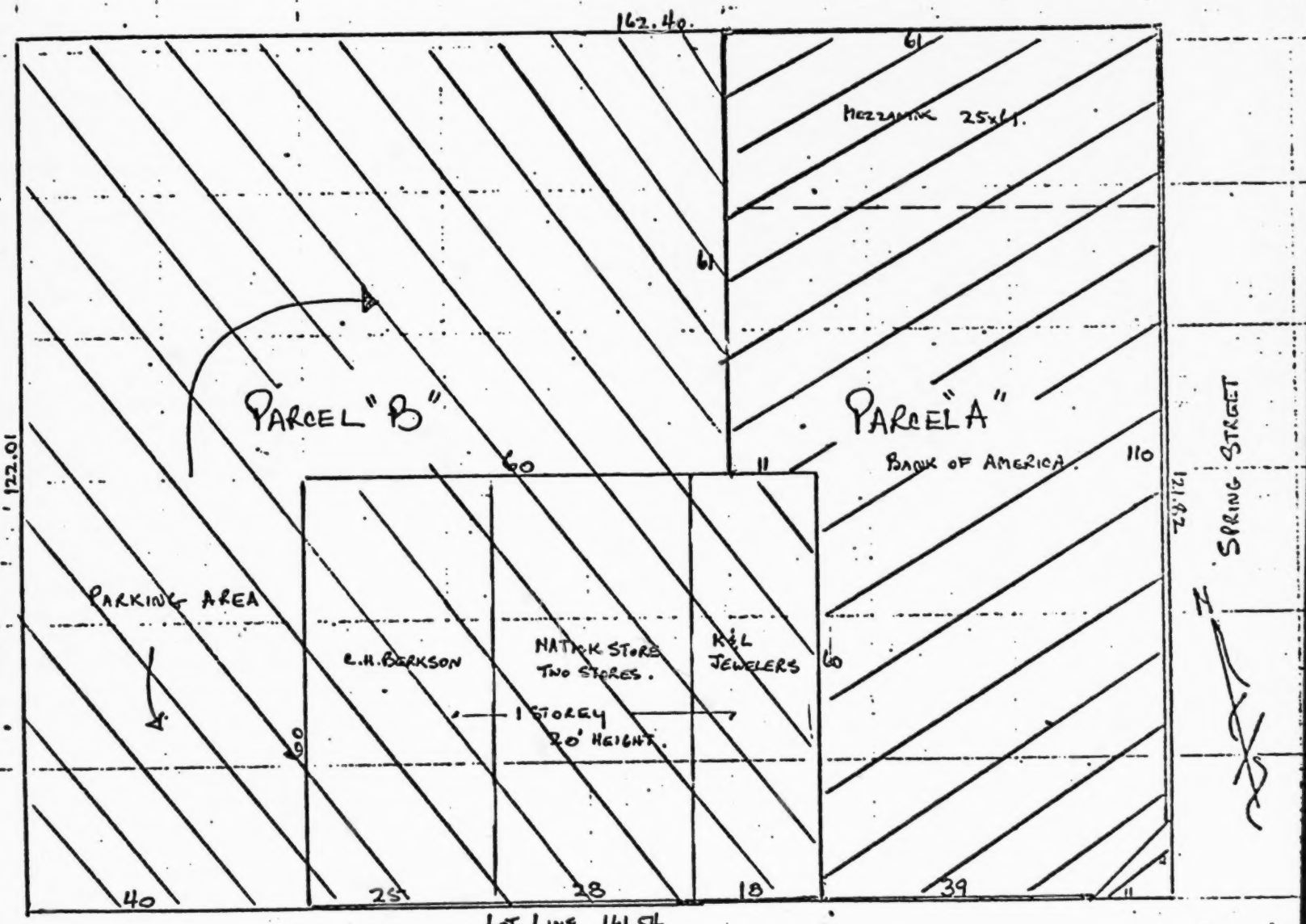
Respectfully submitted,

/s/ Halleck W. Hoag

/s/ Donald C. Kimber

/s/ James L. Barrett

EXHIBIT "A"



PARCELS "A" AND "B" PARTITIONED IN KIND.

PB 3-5-45

Title Policy Surveys
Subdivisions

James B.Swinney

Robert L.Mollenhauer

Jack E. Bray

Business
and
Industrial
Property
Surveys

SWINNEY-MOLLENHAUER & BRAY, INC.
..Formerly..
R. B. HUEY COMPANY
Licensed Land Surveys

426 South Spring St., Los Angeles 13,
California - Phone MAdison 4-2661

September 9, 1968

Mr. Donald C. Kimber
Attorney at Law
639 South Spring Street
Los Angeles, California 90013

Dear Sir:

Re: Proposed portion of
Northwest corner of
Fourth & Spring
Street
Our Survey No. 9595

As per your request, I have investigated the above captioned property, more particularly described as 361 South Spring Street and 207-217 West Fourth Street, to ascertain what problems

might arise because of the proposed order of partition. I have based my report on the partition proposal that leaves the Bank of America Building, and the ground covered by it, as one parcel and the balance of the holdings as the second parcel.

This partition, while it might be the ideal pattern from the economics of the split, raises four violations of the City of Los Angeles Ordinances. Following is a summary of each violation and its possible solution:

(a) Section 12.21 -i paragraph 3 states that all business or commercial buildings in the Downtown Business District having a gross floor area of 7,500 square feet or more have at least one parking space for each 1000 square feet of floor area provided. In essence this means, based on the Bank of America Building area of 8,185 square feet (6,660 square feet main floor and 1,525 square feet of mezzanine) that eight parking spaces must be provided to go with the building. These spaces shall be located on the same lot or not more than 1500 feet therefrom.

Inasmuch as the proposed partition allows for no parking spaces on the Bank of America parcel, it will be necessary to record a covenant and

agreement to the city to furnish these parking spaces somewhere within 1500 feet of the Bank of America parcel. This covenant and agreement must be based on an approved long term lease as regards the parking parcels. This is quite difficult to obtain as most landowners do not want to jeopardize future development of their holdings with such a long term lease.

(b) There exists a covenant and agreement as described in Title Insurance and Trust Co. title report No. 6628882 dated May 27, 1966 whereby Williams Investment Co. does covenant and agree to hold the entire area involved as one parcel.

This would have to be negotiated with the City of Los Angeles and a release of said covenant and agreement recorded.

(c) The Bank of America Building and the K. & L. Jeweler's building were constructed with a common wall. In previous years parcel lines were located on the center lines of said common walls. Changes in the building code have since made location of lines of any new parcels based on the party wall concept illegal.

An Appeal for Modification of Building Ordinances would have to be filed and I think would probably be granted if the order of partition was an accomplished fact.

(d) Any division of land based on new title lines is subject to the Parcel Map Act asper City Zoning Code, Section 17.50.

This can be taken care of after the order of partition by the filing, processing and recording of a parcel map.

Of the four problems involved, I feel that (a) is probably the most difficult to solve and should be taken care of before the order of partition is finalized. The other problems can be worked out after the order of partition is accomplished.

Enclosed is the appraisal, title report and other papers you left with me.

Your truly,
/s/ JACK E. BRAY
Jack E. Bray, Vice President
Swinney, Mollenhauer & Bray

JEB:gr

Copy to: Halleck W. Hoag

AKELEY P. QUIRK and
MILO V. OLSON
519 Pacific Mutual Building
Los Angeles,California 90014
Telephone: 628-7238

Attorneys for Plaintiff
Burdick F. Williams

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

BURDICK F. WILLIAMS, Plaintiff,	NO. 887,163
vs.	FINAL ORDER JUDGMENT AND DECREE APPROVING REFEREES' REPORT AND ORDERING PARTITION
HALSEY L. WILLIAMS, et al.,	
Defendants.	

On this 29th day of October, 1963 in Department 59 of the above court, the Honorable Robert W. Kenny, Judge Presiding, the report of partition by the Referees appointed by this court to make such a report came on for hearing, together with a motion by plaintiff that the attorneys' fees and

costs incurred in this action be made a lien on the partitioned property. Messrs. Akeley P. Quirk and Milo V. Olson appeared as attorneys for plaintiff. Defendant Halsey L. Williams appeared in propria persona, and the Referees Hallack W. Hoag, Donald C. Kimber and James L. Barrett were represented at the hearing.

GOOD CAUSE APPEARING THEREFOR, IT IS NOW FINALLY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

The Referees' Report is hereby approved and in accordance therewith, the real property described in the Interlocutory Decree filed and entered in this action is ordered partitioned, and in that regard, that portion of the real property described as Parcel A as set forth on Schedule A attached to the Referees' Report is allotted to and partitioned to plaintiff Burdick F. Williams. That portion of the real property described as Parcel B as set forth on Schedule A to the Referees' Report is allotted and partitioned to defendant Halsey L. Williams.

Parcel A partitioned to the plaintiff is valued at $200,000.00.

Parcel B allotted and partitioned to defendant Halsey L. Williams is valued at $210,000.

Said parcels A and B are subject to the lien of a first Trust Deed in favor of defendant Crocker-Citizens National Bank with a present balance owing in the sum of $29,941.13. Said Trust Deed is thus a first lien on all of the real property described in the Interlocutory Decree herein.

It is further adjudged that in view of the discrepancy in the values of Parcels A and B as above set forth whereby the partition hereby ordered is unequal, it is therefore ordered that defendant Halsey L. Williams shall pay the sum of $5,000 in cash forthwith to plaintiff Burdick F. Williams, and plaintiff has a judgment for $5,000 against defendant Halsey L. Williams, which judgment is hereby made a lien in favor of plaintiff Burdick F.Williams against Parcel B, that portion of the real property above referred to allotted to defendant Halsey L. Williams, which lien is subject to the Trust deed lien of record in favor of defendant Crocker-Citizens National Bank above referred to. Said $5,000 lien against Parcel B shall remain such until said $5,000 is paid and in the event it is not paid forthwith, plaintiff shall be entitled to have execution issue forthwith for

the enforcement and recovery of said $5,000 judgment against defendant Halsey L. Williams.

It is further ordered,adjudged and decreed that the attorney fees incurred by plaintiff Burdick F. Williams in the sum of $5,000 and costs and other expenses incurred in this case by plaintiff in the sum of $472.40 were necessary and were for the common benefit of the property ordered partitioned by this decree. Said attorney fees and costs in the total sum of $5,472.40 are hereby ordered divided between plaintiff Burdick F. Williams and defendant Halsey L. Williams, and whereas, all of said attorney fees and costs were incurred by plaintiff, it is ordered that one-half thereof, to wit: $2,736.20, is ordered paid forthwith by defendant Halsey L. Williams to plaintiff Burdick F. Williams. Said sum of $2,736.20 is hereby ordered and made a lien on the real property hereby partitioned to defendant Halsey L.Williams that is, Parcel B. In the event said $2,736.20 is not paid, execution may issue in favor of plaintiff Burdick F. Williams and against defendant Halsey L. Williams for the enforcement and collection thereof.

It is further ordered, adjudged and decreed that the Rererees' fees and expenses in the sum of $2,693.75 are reasonable and plaintiff Burdick F. Williams and defendant Halsey L. Williams are ordered to share said expenses equally. In that regard, the Referees Hallack W. Hoag, Donald C. Kimber and James L. Barrett have judgment against plaintiff Burdick F. Williams for $1,346.88 payable forthwith, which $1,346.88 shall be a lien on that portion of the real property allotted to plaintiff Burdick F. Williams, Parcel A, and shall remain a lien thereon until paid. In the event said $1,346.88 is not paid by plaintiff, execution in favor of said Referees may issue for the enforcement and collection thereof. Further in that regard, the Referees Hallack W. Hoag, Donald C. Kimber and James L. Barrett have judgment against defendant Halsey L. Williams for $1,346.87 payable forthwith, which $1,346.87 shall be a lien on that portion of the real property allotted to defendant Halsey L. Williams, Parcel B, and shall remain a lien thereon until paid. In the event said $1,346.87 is not paid by defendant Halsey L. Williams, execution in favor of said Referees may issue for the enforcement and collection thereof.

It is further ordered, adjudged and decreed that the survey of Par-

cels A and B filed with the court and marked in evidence as Exhibit 1, is hereby approved and it is adjudged that said survey appropriately and properly described said Parcels A and B herein referred to, and that the surveyor's expense incurred herein in making said survey of the real property was for the common benefit of said property and said total cost in the sum of $458.00 is hereby ordered to be shared equally by plaintiff Burdick F. Williams and defendant Halsey L. Williams, and inasmuch as plaintiff Burdick F. Williams has agreed to pay and is liable to the surveyor for said costs and expense, plaintiff Burdick F. Williams has judgment against defendant Halsey L. Williams in the sum of $229.00, being one-half of the total amount, which sum is hereby ordered to be a lien on Parcel B. In the event said sum is not paid by defendant Halsey L.Williams in the sum of $229.00 to plaintiff, plaintiff Burdick F. Williams shall be entitled to have execution issue thereon for the purpose of enforcement and collection .

It is further ordered, adjudged and decreed that as a condition to plaintiff Burdick F. Williams having allott-

ed to him Parcel A, he shall execute and is hereby ordered to execute a covenant running with the land respecting said Parcel A to the effect that so long as plaintiff is the owner of Parcel A, he will provide a minimum of eight (8) parking spaces for automobiles within 1500 feet of Parcel A. The allottment of Parcel A to plaintiff by this decree is specifically subject to such a covenant running with the land, and said eight (8) parking spaces (minimum number) located within 1500 feet of Parcel A shall be available to customers or other persons using said Parcel A, and shall be for their benefit.

In accordance with said survey Exhibit 1, Parcels A and B are described as follows:

Parcel A allotted to plaintiff Burdick F. Williams:

"That portion of Block 7 of Ord's Survey in the City of Los Angeles, County of Los Angeles, State of California as per map recorded in Book 53, Page 66 et seq. of Miscellaneous Records in the office of the County Recorder of said county, described as follows:

"Beginning at the point of intersection of the Northwesterly line of Spring Street, 80 feet wide, with the Northeasterly line of Fourth Street, 60 feet wide; thence along said Northeasterly line of Fourth Street North 51° 41' 00" West 49.67 feet to the point of intersection with the center line of a common wall; thence along said center line North 37°56'39" East 60.23 feet to the center line, a common wall; thence along the center line of said last mentioned wall North 51°55'21" West 11.37 feet to the Southwesterly prolongation of the Northwesterly face of a one story building; thence along said prolongation and said building face North 37° 37' 36" East 38.46 feet; thence North 51°11'39" West 3.30 feet; thence North 37°43'49" East 23.08 feet to the Northeasterly line of the land described in deed recorded as Document No. 17 on October 26, 1935 in Book 13697, Page 183 of Official Records of said county; thence along said Northeasterly line South 51°34'40" East 64.40 feet to said Northwesterly line of Spring Street; thence along said Northwesterly line South 37°49'45" West 121.63 feet to the point of beginning."

Parcel B allotted to defendant Halsey L. Williams:

"That portion of Block 7 of Ord's Survey in the City of Los Angeles, County of Los Angeles, State of California as per map recorded in Book 53, Page 66 et seq of Miscellaneous Records in the office of the County Recorder of said county, described as follows:

"Beginning at the point of intersection of the Northwesterly line of Spring Street, 80 feet wide, with the Northeasterly line of Fourth Street, 60 feet wide; thence along said Northeasterly line of Fourth Street North 51°41'00" West 49.67 feet to the point of intersection with the center line of a common wall, said point being the true point of beginning of this description; thence along said center line North 37°56'39" East 60.23 feet to the center line, a common wall; thence along the center line of said last mentioned wall North 51°55'21" West 11.37 feet to the Southwesterly prolongation of the Northwesterly face of a one story building; thence along said prolongation and said building face North 37°37'36" East 38.46 feet; thence North 51°11'39" West 3.30 feet; thence North 37°43'49" East 23.08 feet to the Northeasterly line of the land described in deed re-

corded as Document No. 17 on October 26, 1935 in Book 13697, Page 183 of Official Records of said county; thence along said Northeasterly line North 51°34'40" West 96.51 feet to the most Northerly corner of said land; thence along the Northwesterly line of said land South 38°02'50" East 61.64 feet to the Northeasterly line of the land described in deed recorded as Document No. 256 on December 23, 1958 in Book D 313, Page 131 of said Official Records; thence along said last mentioned Northeasterly line North 52°11' 00" West 0.25 of a foot to the Northwesterly line of said last mentioned land; thence along said last mentioned line South 37°53'50" West 60.27 feet to said Northeasterly line of Fourth Street; thence along said last mentioned Northeasterly line South 51°41'00" East 111.84 feet to the true point of beginning".

Dated: October___, 1968.

/s/ Robert W. Kenny
Judge of the Superior Court.""

(Certified for nonpublication)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

BURDICK F. WILLIAMS, Plaintiff and Respondent, vs. HALSEY L. WILLIAMS, Defendant and Appellant.	CIV. NO. 35057 Court of Appeal Second Dist. FILED NOV 25 1969 CLAY ROBBINS, JR. Clerk Deputy Clerk

APPEAL from a judgment of the Superior Court, Los Angeles County, Robert W. Kenny, Judge. Motion to dismiss denied; judgment affirmed.

Motion to dismiss appeal from a final judgment in a partition action denied; judgment affirmed.

Milo V. Olson and Akeley P.Quirk, for Plaintiff and Respondent.

Halsey L. Williams, in propria persona, for Defendant and Appellant.

The parties to this proceeding are brothers. They are co-owners of a piece of property located on the northwest corner of Fourth and Spring Streets, in the City of Los Angeles. Plaintiff brought an action for partition, and an interlocutory judgment, determining the interests of the parties and ordering a partition in kind, was entered. That judgment was affirmed on appeal by an opinion reported in 255 Cal App 2d 648. After the remittitur on that appeal had gone down, the referees appointed by the trial court filed their report, dividing the property into two parcels and recommending the assignment of one of them (referred to in the Record as Parcel B) to defendant. At the hearing on that report, defendant raised numerous objections. In an effort to terminate the dispute, plaintiff offered to allow defendant to have his choice of the two parcels. That offer was not accepted and, after further argument, the trial court adopted and confirmed the referees' report and assigned the parcels as therein recommended. Defendant has appealed; plaintiff moved to dismiss the appeal as frivolous. We deny the motion to dismiss and affirm the judgment.

I

Since the matter has been fully briefed by both parties, and since a

determination of the motion to dismiss requires a study of the full record, we prefer to decide the appeal on its merits and, for that reason only, deny the motion to dismiss.

II

Much of the argument by defendant in this brief and at oral argument, is a mere attempt to reargue the matters involved in the earlier appeal. Of course we may not now re-examine these matters. The right of plaintiff to a partition, and to a partition in kind, is settled and cannot be reopened in this proceeding.

The division recommended by the referees, and accomplished by the judgment, gives to the plaintiff the parcel at the corner (referred to in the record as Parcel A), presently under a lease to the Bank of America. The parcel (B) given to the defendant runs along the north side of Fourth Street, westerly from the parcel (A) assigned to plaintiff; it presently is occupied by three small stores and by a parking lot. The referees found that the parcel assigned to defendant was more valuable than the one assigned to plaintiff, and recommended a payment by defendant to plaintiff of $5,000 to equalize the valuations.

Defendant's brief does not dispute the fact that, on the basis used by the referees, he has received the more valuable parcel. In fact, on his figures, capitalizing the present rentals, the parcel he has received is worth $120,675 more than the other parcel. 1/ Defendant's objection, as we understand it, is that the present rental on the corner parcel is lower than could be procured by good management and, therefore, that a capitalization of its true rental value would show that it was the more valuable parcel.

In support of that contention, he points to a series of letters -- introduced at the first trial but again brought to the attention of the trial court in the hearing under review -- which, he contends, show

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1/

It may be noted that, on those figures, defendant has been given a windfall of $55,000 by the judgment.

that he could and would have secured an extension and revision of the bank's present lease, at a higher rental, had it not been for interference by the plaintiff. He objects, also, that the referees were allowed to report hearsay statements to the effect that the bank had indicated that, if parcel A was given to defendant, the bank would not renew its lease on any terms. All of these matters were aired before the trial court; its determination of them adversely to defendant cannot be reviewed here. 2/

In addition, when the matter was in trial, plaintiff, as we have indicated above, offered to give defendant his choice of the two parcels. That offer was never accepted. Under these circumstances, defendant

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2/ At oral argument, defendant claimed that he now had evidence to show that the alleged statement by the bank personnel was not made. But he made no effort to introduce any such evidence in the trial court; we must decide the appeal on the record he made there, not on some record he wishes he had made.

cannot complain here that he was short-changed in the assignment of the parcels.

The motion to dismiss the appeal is denied; the judgment is affirmed.

KINGSLEY, Acting P.K.

We concur:

DUNN, J.

ALARCON, Justice pro tem.*

Certified for nonpublication in the Official Reports pursuant to Rule 976.

KINGSLEY, Acting P.J.

DUNN, J.

ALARCON, J. pro tem.*

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* Superior court judge assigned by the Chairman of the Judicial Council.